

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff

vs.

ATIBA WADE,

Defendant.

2:06-cr-00103-RCJ-GWF

ORDER

Petitioner Atiba Wade has filed a motion requesting the Court to terminate his remaining term of supervised release pursuant to 18 U.S.C. § 3583(h). The Government has filed a Response in which it “defers to the recommendation of the United States Probation Office (“USPO”). (#20). The USPO has filed a Response in which it recommends granting Petitioner’s request. (#23). For the reasons given herein, the Motion (#19) is GRANTED.

I. FACTS

Petitioner Atiba Wade is a federal prisoner held at the Federal Correctional Institution in Butner, NC. On September 7, 2006, this Court revoked Petitioner’s supervised release for violation of Special Condition #2 (association with persons under eighteen). (#17). The Court remanded Petitioner to the custody of the Bureau of Prisons (“BOP”) for eight months with a term of supervised release of twenty-four months to follow. (*Id.*)

While Petitioner was serving this sentence, the Government filed a motion pursuant to § 4248, seeking civil commitment of Petitioner as a sexually dangerous person. Because of this,

Petitioner has remained in the custody of BOP long beyond the termination of his eight-month sentence (April 22, 2007) and his subsequent two-year term of supervised release (April 21, 2009). A civil commitment hearing, as required pursuant to § 4248(a) has not yet been scheduled.

II. ANALYSIS.

Supervised release may be imposed to follow after a term of imprisonment that was itself imposed for violating the conditions of a previous supervised release.

When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

18 U.S.C. § 3583(h). “A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.” § 3624(e).

A person is not “imprisoned” under the meaning of § 3624(e) while in pre-trial detention, and hence supervised release is not tolled during such a period. *United States v. Morales-Alejo*, 193 F.3d 1102, 1106 (9th Cir. 1999) (holding that state pre-trial detention did not toll federal supervised release because the plain meaning of the statute and intent of Congress indicated that the statute only applies to toll supervised release when imprisoned in connection with a criminal conviction). The BOP argues that § 3624(e) does not apply to the present case, which it views as analogous to administrative detention (#23 at 2).

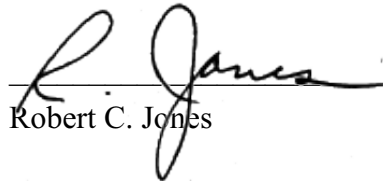
Here, Petitioner has been held beyond his eight-month term of imprisonment while awaiting a civil commitment hearing under § 4248. Although it appears that no court has directly addressed whether supervised release is tolled under § 3624(e) when a person is civilly committed (or, as here, awaiting civil commitment) under § 4248, the Court believes *Morales-Alejo* applies *a fortiori* in the present case, where Petitioner is not even awaiting a criminal trial, but only a civil commitment

1 hearing, which cannot result in a criminal conviction. Petitioner's supervised release was tolled
2 during his eight-months of imprisonment; however, it was not tolled during the time he has since
3 spent awaiting his civil commitment hearing.

4 **III. CONCLUSION**

5 IT IS HEREBY ORDERED that the Motion (#19) is GRANTED.

6 DATED: September 17, 2009

7 
8 Robert C. Jones